

REFERENCE TITLE: illegal aliens; verification; employment

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HCR 2044

Introduced by

Representatives Pearce, Barnes, Boone, Gorman, Huffman, Murphy, Nelson,
Smith, Stump; Allen J, Anderson, Biggs, Burges, Carpenter, Farnsworth,
Gray C, Groe, Knaperek, McClure, McComish, McLain, Nichols, Paton, Pierce,
Quelland, Robson, Rosati, Tully, Weiers JP, Yarbrough, Senators Bee,
Blendu, Burns, Flake, Gould, Gray, Harper, Johnson, Martin, Verschoor,
Waring

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO
THE EMPLOYMENT OF ILLEGAL ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,
4 the following measure, relating to the employment of illegal aliens, is
5 enacted to become valid as a law if approved by the voters and on
6 proclamation of the Governor:

7 AN ACT

8 AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY
9 ADDING ARTICLE 2; AMENDING SECTION 41-763, ARIZONA REVISED
10 STATUTES; AMENDING TITLE 41, CHAPTER 23, ARTICLE 1, ARIZONA
11 REVISED STATUTES, BY ADDING SECTION 41-2505; AMENDING SECTION
12 43-1021, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005,
13 CHAPTER 316, SECTION 3 AND CHAPTER 317, SECTION 11; REPEALING
14 SECTION 43-1021, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS
15 2005, CHAPTER 292, SECTION 2; RELATING TO THE EMPLOYMENT OF
16 ILLEGAL ALIENS.

17 Be it enacted by the Legislature of the State of Arizona:

18 Section 1. Title 23, chapter 2, Arizona Revised Statutes,
19 is amended by adding article 2, to read:

20 ARTICLE 2. EMPLOYMENT OF ILLEGAL ALIENS

21 23-221. Definitions

22 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

23 1. "EMPLOYER" MEANS ANY PERSON OR ENTITY THAT EMPLOYS
24 ANOTHER PERSON. EMPLOYER INCLUDES THIS STATE AND ANY POLITICAL
25 SUBDIVISION OF THIS STATE.

26 2. "ILLEGAL ALIEN" MEANS ANY PERSON WHO IS NOT A CITIZEN
27 OR NATIONAL OF THE UNITED STATES AND WHO IS UNLAWFULLY PRESENT
28 OR UNLAWFULLY RESIDING IN THE UNITED STATES.

29 23-222. Verification of employees; civil and criminal
30 immunity

31 NOTWITHSTANDING ANY OTHER STATUTE, AN EMPLOYER WHO
32 VERIFIES THE IMMIGRATION STATUS OF THE EMPLOYER'S EMPLOYEES
33 THROUGH THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS
34 PROGRAM AS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF
35 HOMELAND SECURITY SHALL NOT BE SUBJECT TO ANY CIVIL SANCTION OR
36 CRIMINAL PENALTY IMPOSED BY THIS STATE FOR EMPLOYING AN ILLEGAL
37 ALIEN.

38 23-223. Employees; social security numbers

39 A. AN EMPLOYER SHALL DISCHARGE AN EMPLOYEE IF THE
40 EMPLOYER DISCOVERS THAT THE EMPLOYEE PROVIDED AN INVALID SOCIAL
41 SECURITY NUMBER TO THE EMPLOYER.

42 B. THIS SECTION DOES NOT APPLY IF THE EMPLOYEE PROVES AN
43 ERROR OCCURRED WHEN THE SOCIAL SECURITY NUMBER WAS PROCESSED BY
44 THE EMPLOYER.

23-224. Illegal alien discharge; remedy

A. AN EMPLOYER SHALL FIRST DISCHARGE ANY ILLEGAL ALIENS WHO ARE EMPLOYED BY THE EMPLOYER BEFORE DISCHARGING AN EMPLOYEE WHO IS LAWFULLY PRESENT IN THIS STATE.

B. AN EMPLOYEE WHO IS AGGRIEVED BY REASON OF A VIOLATION OF THIS SECTION MAY FILE AN ACTION IN SUPERIOR COURT WITHIN NINETY DAYS OF THE ALLEGED VIOLATION TO ENFORCE THIS SECTION. THE COURT MAY AWARD A PREVAILING EMPLOYEE APPROPRIATE RELIEF, INCLUDING REHIRING OF THE EMPLOYEE TO THE EMPLOYEE'S FORMER POSITION, ANY LOST WAGES AND REESTABLISHMENT OF ANY EMPLOYEE BENEFITS. THE COURT SHALL AWARD A PREVAILING EMPLOYEE TREBLE DAMAGES, COSTS AND REASONABLE ATTORNEY FEES.

23-225. Employment of illegal aliens; revocation of state license, certification, permit or charter; enforcement; definition

A. A PERSON WHO HAS A LICENSE, CERTIFICATION, PERMIT OR CHARTER THAT IS ISSUED BY AN AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS STATE AND WHO HAS BEEN SANCTIONED AS AN EMPLOYER BY A FEDERAL AGENCY PURSUANT TO THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 OR ANY OTHER FEDERAL STATUTE FOR KNOWINGLY HIRING OR EMPLOYING AN ILLEGAL ALIEN SHALL HAVE THE PERSON'S LICENSE, CERTIFICATION, PERMIT OR CHARTER REVOKED.

B. THE ATTORNEY GENERAL SHALL ENFORCE THIS ARTICLE.

C. FOR THE PURPOSES OF THIS SECTION, "SANCTION" INCLUDES A FINE, A CIVIL PENALTY OR IMPRISONMENT.

Sec. 2. Section 41-763, Arizona Revised Statutes, is amended to read:

41-763. Powers and duties of the director relating to personnel

The director shall:

1. Appoint employees necessary to perform the duties prescribed by this article.

2. Have authority for developing and administering a program of personnel administration for the state service in conformance with the personnel rules.

3. Have authority to establish such offices as may be necessary to maintain an effective and economical program of personnel administration.

4. Have the power to deputize employees in various state agencies where certain of the functions of personnel administration can be performed by such deputies.

5. Make an annual report and recommendation to the legislature and the joint legislative budget committee as provided in section 41-763.01.

1 6. Adopt rules relating to personnel and personnel
2 administration.

3 7. Subject to legislative appropriation, have the
4 authority to contract for the services of consultants necessary
5 to perform the annual salary plan and salary plan adjustment
6 recommendations.

7 8. Establish a mandatory program of annual personnel
8 management training for all state employees with supervisory or
9 managerial responsibility that is appropriate to the nature and
10 scope of the employees' supervisory responsibilities. The
11 director may waive the annual mandatory training on a case by
12 case basis. The training shall include at least the following
13 subjects:

14 (a) Basic employee supervisory or managerial skills.

15 (b) Establishing employee objectives and performance
16 measures.

17 (c) Measuring employee performance and the use of
18 performance evaluation methods.

19 (d) Employee discipline training and discipline
20 procedures.

21 (e) Other subjects as determined by the director.

22 9. VERIFY THE IMMIGRATION STATUS OF EVERY STATE EMPLOYEE
23 THROUGH THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS
24 PROGRAM AS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF
25 HOMELAND SECURITY.

26 Sec. 3. Title 41, chapter 23, article 1, Arizona Revised
27 Statutes, is amended by adding section 41-2505, to read:

28 41-2505. Awarded contracts; illegal aliens; employee
29 verification; definition

30 A. A PROCUREMENT OFFICER SHALL NOT AWARD A CONTRACT UNDER
31 THIS CHAPTER TO ANY CONTRACTOR OR SUBCONTRACTOR THAT EMPLOYS AN
32 ILLEGAL ALIEN.

33 B. BEFORE A CONTRACT IS AWARDED UNDER THIS CHAPTER, ALL
34 CONTRACTORS AND SUBCONTRACTORS SHALL FIRST VERIFY THE
35 IMMIGRATION STATUS OF THEIR EMPLOYEES THROUGH THE SYSTEMATIC
36 ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM AS ADMINISTERED BY
37 THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY. EACH
38 CONTRACTOR AND SUBCONTRACTOR SHALL PROVIDE A SIGNED AFFIRMATION
39 TO THE PROCUREMENT OFFICER THAT THE REQUIRED VERIFICATION HAS
40 BEEN CONDUCTED.

41 C. FOR THE PURPOSES OF THIS SECTION, "ILLEGAL ALIEN"
42 MEANS ANY PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE UNITED
43 STATES AND WHO IS UNLAWFULLY PRESENT OR UNLAWFULLY RESIDING IN
44 THE UNITED STATES.

Sec. 4. Section 43-1021, Arizona Revised Statutes, as amended by Laws 2005, chapter 316, section 3 and chapter 317, section 11, is amended to read:

43-1021. Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the "ordinary income portion" of a lump sum distribution that was excluded from federal adjusted gross income pursuant to section 402(d) of the internal revenue code.

3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona, reduced, for tax years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. Annuity income received during the taxable year to the extent that the sum of the proceeds received from such annuity in all taxable years prior to and including the current taxable year exceeds the total consideration and premiums paid by the taxpayer. This paragraph applies only to those annuities with respect to which the first payment was received prior to December 31, 1978.

5. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

6. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

7. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph shall apply to all property which is held for the production of income and which is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

1 8. The amount of depreciation or amortization of costs of
2 any capital investment that is deducted pursuant to section 167
3 or 179 of the internal revenue code by a qualified defense
4 contractor with respect to which an election is made to amortize
5 pursuant to section 43-1024.

6 9. The amount of gain from the sale or other disposition
7 of a capital investment which a qualified defense contractor has
8 elected to amortize pursuant to section 43-1024.

9 10. Amounts withdrawn from the Arizona state retirement
10 system, the corrections officer retirement plan, the public
11 safety personnel retirement system, the elected officials'
12 retirement plan or a county or city retirement plan by an
13 employee upon termination of employment before retirement to the
14 extent they were deducted in arriving at Arizona taxable income
15 in any year.

16 11. That portion of the net operating loss included in
17 federal adjusted gross income which has already been taken as a
18 net operating loss for Arizona purposes or which is separately
19 taken as a subtraction under the special net operating loss
20 transition rule.

21 12. Any nonitemized amount deducted pursuant to section
22 170 of the internal revenue code representing contributions to
23 an educational institution which denies admission, enrollment or
24 board and room accommodations on the basis of race, color or
25 ethnic background except those institutions primarily
26 established for the education of American Indians.

27 13. The amount paid as taxes on property in this state
28 with respect to which a credit is claimed under section 43-1078.

29 14. Amounts withdrawn from a medical savings account by
30 the individual during the taxable year computed pursuant to
31 section 220(f) of the internal revenue code and not included in
32 federal adjusted gross income.

33 15. Any amount of agricultural water conservation
34 expenses that were deducted pursuant to the internal revenue
35 code for which a credit is claimed under section 43-1084.

36 16. The amount by which the depreciation or amortization
37 computed under the internal revenue code with respect to
38 property for which a credit was taken under section 43-1080
39 exceeds the amount of depreciation or amortization computed
40 pursuant to the internal revenue code on the Arizona adjusted
41 basis of the property.

42 17. The amount by which the adjusted basis computed under
43 the internal revenue code with respect to property for which a
44 credit was claimed under section 43-1080 and which is sold or

otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

18. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

19. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

20. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

21. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

22. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization or a public school for which a credit is claimed under section 43-1089 or 43-1089.01.

23. Any amount deducted in computing Arizona gross income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1090.

24. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1087 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

25. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1081.02.

26. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

27. With respect to property for which an expense deduction was taken pursuant to section 179 of the internal

1 revenue code, the amount in excess of twenty-five thousand
2 dollars.

3 28. The amount of any deductions that are claimed in
4 computing federal adjusted gross income representing expenses
5 for which a credit is claimed under section 43-1075.

6 29. THE AMOUNT BY WHICH THE DEPRECIATION OR AMORTIZATION
7 COMPUTED UNDER THE INTERNAL REVENUE CODE WITH RESPECT TO
8 PROPERTY FOR WHICH A CREDIT WAS TAKEN UNDER SECTION 43-1090.01
9 EXCEEDS THE AMOUNT OF DEPRECIATION OR AMORTIZATION COMPUTED
10 PURSUANT TO THE INTERNAL REVENUE CODE ON THE ARIZONA ADJUSTED
11 BASIS OF THE PROPERTY.

12 30. THE AMOUNT BY WHICH THE ADJUSTED BASIS COMPUTED UNDER
13 THE INTERNAL REVENUE CODE WITH RESPECT TO PROPERTY FOR WHICH A
14 CREDIT WAS CLAIMED UNDER SECTION 43-1090.01 AND WHICH IS SOLD OR
15 OTHERWISE DISPOSED OF DURING THE TAXABLE YEAR EXCEEDS THE
16 ADJUSTED BASIS OF THE PROPERTY COMPUTED UNDER SECTION
17 43-1090.01.

18 31. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS
19 PAID TO AN ILLEGAL ALIEN AND THAT IS DEDUCTED AS A BUSINESS
20 EXPENSE UNDER SECTION 162 OF THE INTERNAL REVENUE CODE. FOR THE
21 PURPOSES OF THIS PARAGRAPH, "ILLEGAL ALIEN" MEANS ANY PERSON WHO
22 IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES AND WHO IS
23 UNLAWFULLY PRESENT OR UNLAWFULLY RESIDING IN THE UNITED STATES.

24 Sec. 5. Repeal

25 Section ~~43-1021~~, Arizona Revised Statutes, as amended by
26 Laws 2005, chapter 292, section 2, is repealed.

27 2. The Secretary of State shall submit this proposition to the voters
28 at the next general election as provided by article IV, part 1, section 1,
29 Constitution of Arizona.